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Written statement* submitted by the Aliran Kesedaran Negara National Consciousness Movement, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Malaysia's crackdown on fundamental liberties and human rights

In 2015 human rights in Malaysia further deteriorated. With the exposure of numerous corruption scandals involving prominent politicians and high ranking government officials, the government of Malaysia responded harshly against critics, whistleblowers and political opponents with draconian and repressive laws to secure the ruling government's political powers and dominance.

Selective Prosecution of Civil Activists and Politicians

Throughout 2015, civil activists conducted a number of anti-corruption campaigns with regard to the highly questionable dealings and transactions that put the spotlight on a government-linked strategic investment body 1MDB and Prime Minister Najib Razak. Activists also campaiged against the implementation of the Goods and Services Ta and the Trans-Pacific Partnership Agreement (TPPA). Activists and participants of these gatherings were often called for questioning and investigated by the police and in some cases arrested and prosecuted.

Section 124 of the Penal Code

The Penal Code (Amendments) Act 2012 came into force on 31 July 2012. The amendment introduced 13 additional clauses to Section 124 of the Penal Code. The amendment included a new crime of "activities detrimental to parliamentary democracy" which was broadly defined as:

"any activity carried out by a person, or a group of persons, or a group, designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means."

While protection of democratic institutions against violence and threats of violence is justifiable, the manner in which the amendment has been used does not reflect this. Politicians opposing the current government such as Khairuddin Abu Hassan were arrested for lodging reports about the 1MDB scandal allegedly involving the prime minister.

Sections 124B and 124C state that anyone who is involved in an "activity detrimental to parliamentary democracy can be imprisoned for a term up to 20 years, while those attempting to do so can be imprisoned up to 15 years".

Section 124D, 124E and 124F of the amendments state that anyone who prints, publicises, sells, issues, circulates, reproduces or possesses, or imports any document or publication detrimental to parliamentary democracy can be imprisoned for a term up to 15 years, 10 years, and five years respectively.

Section 124J of the Act imposes a prison term of 10 years for those who receive such documents but fail to deliver them to the police.[1] Nowhere in the quoted sections is the phrase "...activity detrimental to parliamentary democracy" clearly defined. This ambiguity allows too wide an interpretation of this phrase which could encompass anything perceived by the authorities to be intended to undermine parliamentary democracy, even if it is non-violent or lawful.

The police often use Section 124 of the Penal Code to clamp down on human rights defenders and critics of the government. Some of the cases involving Section 124 of the Penal Code include:

- On 22 July 2015, the owner of The Edge Media Group, Tong Kooi Ong, was investigated by police under Section 124B of the Penal Code for allegedly using falsified documents in their investigative reporting on the 1MDB scandal. The group's publisher and CEO, Ho Kay Tat, was also probed under the same section.[2]
- On 24 July, two opposition members of Parliament, Tony Pua and Rafizi Ramli, were investigated in relation to allegations that they were involved in the tampering and fabrication of documents related to the 1MDB scandal in order to oust Prime Minister Najib.[3]

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[1] Penal Code Amendment Act 92012), Section 124 Penal Code Malaysia Available at [http://www.federalgazette.agc.gov.my/outputaktap/20120622_A1430_BI_Act%20A1430%20BI-penal%20code%20(amendment).pdf]

[2] http://www.themalaymailonline.com/malaysia/article/the-edges-ho-kay-tat-summoned-for-questioning-over-1mdb-reports

- On 31 July, Ambiga Sreenevasan, president of human rights group Hakam, was called in for police questioning under Section 124 for allegedly urging the public to take to the streets to demand Najib's resignation.[4]
- On 26 August, 17 persons, mainly students, were arrested under Section 124B of the Penal Code for staging a sit-in protest outside Parliament. [5]
- On 1 September, seven activists were probed by the police under Section 124C of the Penal Code in relation to the Bersih 4 rally in late August. The rally saw close to 500,000 protesters calling for the resignation of the prime minister and for institutional reforms.[6] They are also being investigated under Section 141 of the Penal Code for unlawful assembly in conjunction with an offence under Section 120 of the Penal Code (criminal conspiracy).
- Five organisers of Bersih 4 in Kota Kinabalu, Sabah were also probed under Section 124B of the Penal Code.[7]

Alarming increase in the use of the Sedition Act to crack down on human rights defenders

With the weakening of its political grasp over the country following the 2013 general election, in which the ruling Barisan Nasional failed to garner the popular vote, the government opted to crackdown against political opponents, critics and civil activists with the Sedition Act 1948.

On 2 September 2014, Dr Azmi Sharom claimed trial to a charge under the Sedition Act 1948 for his comments on the political crisis in Selangor. (If convicted, he faced a maximum fine of RM5,000, or three years jail or both.[8] He was acquitted on 19 February 2016.)

On 17 September 2014, Azmi filed a court application to challenge the constitutionality of Section 4 of the Sedition Act, claiming that it was unconstitutional and violated Article 10 of the Federal Constitution, which guarantees freedom of speech[9]. Unfortuately, on 6 October 2015, the Federal Court maintained that it was constitutional[10].

This decision effectively allowed the prosecution of other civil activists and politicians that were facing prosecution under the Sedition Act 1948 for innocuous statements. Between 2014-2015 at least 78 individuals including activists, cartoonist, politicians, students, journalists and academicians have been investigated or charged under the Sedition Act.[11]

Furthermore, the Home Ministry in its official reply in Parliament recently, indicated that between 2008 and 2015, the government had investigated 409 cases under the Sedition Act. For most part, the Sedition Act 1948 has been used and is still actively used to silence opposition and dissenters by the government.

Apart from Dr Azmi Sharom, others have been charged:

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[3]Malaysiakini, https://www.malaysiakini.com/news/305855

[4]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/bersih-slams-police-for-harassing-ambiga

[5]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/police-abusing-section-124b-of-the-penal-code-says-bar

[6]The Malay Mail Online, Police to question Bersih 4 rally organisers tomorrow, group confirms .http://www.themalaymailonline.com/malaysia/article/police-to-question-bersih-4-rally-organisers-tomorrow-group-confirms

[7]The Malay Mail online, http://www.themalaymailonline.com/malaysia/article/cops-haul-up-5-in-sabah-for-questioning-over-state-bersih-4-rally

[8]See, The Malaysian Insider, Available at <http://www.themalaysianinsider.com/malaysia/article/azmi-sharoms-case-referred-to-federal-court>

[9]The Section 4(1) of the Sedition Act, covers the arrangement of an activity, which would have "a seditious tendency". It likewise covers speech and the printing, publishing and distribution, reproduction or importation of seditious materials. The burden of proof lies on the person who has in their possession articles that are deemed seditious.

[10]See, The Malay Mail Online , Available at http://www.themalaymailonline.com/malaysia/article/federal-court-rules-sedition-act-constitutional-ums-azmi-sharom-to-stand-tr

[11]See, OHCHR, Available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E#sthash.HA7VTdcD.dpuf

1. On 3 April 2015, Cartoonist Zunar was charged for nine offences under the Sedition Act. The charges relate to a series of tweets critical of the government that Zunar sent after opposition leader Anwar Ibrahim was jailed on sodomy charges in February 2015.[12]

2. Prosecution of Khalid Ismath under the Sedition Act and the Communication and Multimedia Act 1998 (another law often used against comments made online) for allegedly offending a member of the royal family. He was first denied bail and sent to solitary confinement at Ayer Molek Prison. He was released under interim bail of RM70,000 while the high court reviewed his case. On 11 November, his interim bail was formalised.

3. On 20 October, Opposition MP R Sivarasa was charged under Section 4(1)(b) of Sedition Act for his speech during a #KitaLawan protest rally in March for his comments against the Judiciary in regards to Anwar Ibrahim's case.[13]

These are just a few examples. Aliran maintains a fuller Crackdown Watch on its website aliran.com, listing the scores of people being probed, arrested and charged under the Sedition Act and other oppressive laws in recent years.

Torture under Security Offences (Special Measures) Act 2012 (Sosma)

In December 2015, human rights group Suaram documented 46 Sosma cases. The number documented was a far cry from the actual numbers when the Chief Justice of Malaysia announced that there were 110 new case related to Sosma heard in 2015[14].

Some of the questionable arrests include:

1. Nor Azmi Jalani who was arrested as a part of 'mass' arrests early 2015. He was allegedly tortured and beaten during his 28-day detention period and forced to confess.

2. Khairuddin Abu Hassan and his lawyer Matthias Chang were detained under Sosma for offences under Section 124K and Section 124L of the Penal Code in relation to police reports filed abroad on corruption and financial misappropriation involving high level government officials.[15] Their arrest was the first politically motivated arrest under Sosma. Fortunately, the High Court of Kuala Lumpur ruled that the alleged sabotage of financial institutions did not fall under the purview of Sosma and Part VI of the Penal Code and released both Khairuddin and Matthias on bail.[16]

On 18 January 2016, Suaram released letters from seven Sosma detainees who claimed they were tortured. The letters appear to show a systematic pattern of torture[17] resembling that previously experienceed by Internal Security Act 1960 detainees. The detainees alleged that they were:

- beaten and kicked after being handcuffed and arrested in public despite not resisting arrest
- beaten in the head and abdomen several times by a large group of investigating officers following a refusal to admit to acts that the victim claims he did not commit
- forced to stand in a painful 'half-stand' position - and threated with more beatings if they moved - while statements were being recorded
- forced to strip, crawl around "like a dog", and pick up in the mouth a piece of rubber thrown on a dirty floor.
- forced to make a pronouncement of divorce or subjected to regular threats of harm to wife and children.

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[12]Al Jazeera, http://www.aljazeera.com/news/2015/04/malaysia-cartoonist-charged-sedition-tweets-150403065345610.html

[13]Free Malaysia Today, http://www.freemalaysiatoday.com/category/nation/2015/10/20/sivarasa-charged-under-sedition-act-over-anwars-jailing/

[14]Malay Mail Online, CJ: 110 SOSMA cases in 2015 http://www.themalaymailonline.com/malaysia/article/cj-110-sosma-cases-in-2015

[15]The Malaysian Insider, http://www.themalaysianinsider.com/malaysia/article/lawyer-matthias-chang-arrested-under-sosma

[16]See, SUARAM 2015 Overview Report.

[17]Malaysiakini, https://www.malaysiakini.com/news/327255

The United Nations Human Rights Office for South-East Asia (OHCHR) has called on Malaysian authorities to conduct investigations into allegations of torture by Sosma detainees.

The UN office has also urged the Malaysian government to sign and ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).[18]

In the light of the above, we call upon the United Nations:

- to immediately condemn the unacceptable human rights violations presently taking place in Malaysia.
- to call on the Malaysian government to:
    - immediately stop all attempts at intimidation and drop all charges against human rights defenders
    - repeal draconian laws such as the Sedition Act 1948, Security Offences (Special Measures) Act 2012, the Peaceful Assembly Act 2012 and Section 124 Penal Code
    - conduct an independent and immediate investigation into allegations of torture of Sosma detainees
    - allow the UN Special Rapporteur on Human Rights Defenders and Special Rapporteur on Torture to visit Malaysia to carry out an independent inquiry with the full co-operation of the Malaysian government in their investigation.

Suara Rakyat Malaysia (Suaram), an NGO without consultative status, also shares the views expressed in this statement.

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[18]Malaysiakini, Probe Sosma detainees' torture claims, UN tell M'sia ,https://www.malaysiakini.com/news/327854